RECEIVED
DEC 2 5 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. 80-5942

TONY B. AMADEO,

Petitioner

VS.

EUGENE RUSSEAU, SHERIFF,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

EDWARD T. M. GARLAND
GARLAND, NUCKOLLS & CATTS, P.C.
1012 Candler Building
Atlanta, Georgia 30303
Telephone: (404) 577-2225

WILLIAM M. WARNER
1010 Angelo Court
Atlanta, Georgia 30319
Telephone: (404) 261-5519

ATTORNEYS FOR PETITIONER

QUESTION PRESENTED FOR REVIEW

WHETHER THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

WHETHER THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION . . i

TABLE OF AUTHORITIES. iii

OPINIONS BELOW. 1

JURISDICTION. 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED . . . 2

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT

THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. 6

CONCLUSION. 17

CERTIFICATE OF SERVICE. 19

APPENDICES A through F. . . . . .

TABLE OF AUTHORITIES

Amadeo v. State, 243 Ga. 667 (1979) 5, 14

Anderson v. State, 223 Ga. 174, 154 S.E.2d 246 (1967). 8, 9

Anderson v. Georgia, 390 U.S. 206, 19 L.Ed. 1039, 88 S.Ct. 902 (1968) 8

Bailey, Willie, et al. v. Vining, Roy L. et al., Ga. Number 76-199-MAC 6, 8

Barrow v. State, 235 Ga. 635, 221 S.E.2d 416 (1975) . . . 9, 10, 15

Brownfield v. South Carolina, 189 U.S. 426 (1902) 7

Bryan v. State, 124 Ga. 79, 52 S.E. 298 (1905). 10

Burke v. Whitley, 221 Ga. 108, 143 S.E.2d 171 (1965). . . 10

Castaneda v. Partida, 320 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977) 7

Cobb v. State, 218 Ga. 10, 126 S.E.2d 231 (1962). 9, 10

Durham v. State, 239 Ga. 697 (1977) 11

Francis v. Henderson, 425 U.S. 536 (96 S.Ct. 1708, 48 L.Ed.2d 149) (1976). 15

Furman v. Georgia, 408 U.S. 238 (1972). 12, 17

Gardner v. Florida, 430 U.S. 349, 51 L.Ed.2d 393, 97 S.Ct. 1197 (1977). 16, 17

Goodwin v. Hopper, 243 Ga. 193 (253 S.E.2d 156) (1979). . 15

Gregg v. Georgia, 428 U.S. 153 (1976) 12, 13, 16

Harris v. Hopper, 243 Ga. 244 (1979). 15

Hayes v. State, 138 Ga. App. 666 (1976) 8

Jones v. Georgia, 389 U.S. 24, 88 S.Ct. 4 (1967). 14

Martin v. Texas, 200 U.S. 316 (1905). 7

McGhee v. King, 518 F.2d 791 (5th Cir. 1975). 13

McHan v. State, 232 Ga. 470, 207 S.E.2d 457 (1974). . . . 8

Neal v. Delaware, 103 U.S. 370 (1880) 7

New York v. Attica Brothers, 359 N.Y.S.2d 699 (1974). . . 11

Preston v. Mandeville, 428 F.2d 1392 (5th Cir. 1970). . . 7, 13

Sanford v. Hutto, 394 F.Supp. 1278 (E.D. Ark. 1975) . . . 13, 14

Scott v. State, 121 Ga. App. 458 (1970) 8

Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 665 (1880). 7

Swain v. Alabama, 380 U.S. 202, 13 L.Ed.2d 759, 85 S.Ct. 824 (1964) 6

Sanders v. Georgia, 235 Ga. 425, 219 S.E.2d (1975). . . . 9, 14

Taylor v. Louisiana, 419 U.S. 522, 42 L.Ed.2d 690, 95 S.Ct. 692 (1975) 8, 13

Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970) . . .13, 14

Whitus v. Georgia, 385 U.S. 545, 87 S.Ct. 643, 17 L.Ed.2d 599 (1967) 7, 8, 13, 14

Williams v. State, 31 Ga. App. 173, 120 S.E. 131 (1923). 10

Williams v. State, 210 Ga. 665, 82 S.E.2d 217 (1954). . .9

Woodson v. North Carolina, 428 U.S. 280 (1976). 12

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Fifth Amendment. 2, 6

Fourteenth Amendment 2, 6, 11, 15, 16

Statutes

Ga. Code Ann. §59-106. 3

Ga. Code Ann. §59-108. 6

Ga. Code Ann. §59-201. 2

Ga. Code Ann. §59-803. 10

Ga. Code Ann. §27-2537(c)(3) 13

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1980

NO. _____

TONY B. AMADEO,

Petitioner

VS.

EUGENE RUSSEAU, SHERIFF,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF PETITIONER

The Petitioner, TONY B. AMADEO, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Georgia rendered on September 10, 1980, which denied his application for a certificate of probable cause to appeal the denial of habeas corpus relief, sought in Putnam County, Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia was entered on September 10, 1980, and is attached hereto as Appendix A. The Petitioner's Motion for Rehearing was denied by the Supreme Court of Georgia on September 24, 1980.

JURISDICTION

The judgment of the Supreme Court of the State of Georgia was entered on September 10, 1980, and is set out in Appendix A. A Motion for Rehearing was filed and denied on September 24, 1980. Jurisdiction of this Court is invoked under 28 U.S.C. 1257(3), the Petitioner having asserted below, and asserting here, deprivation of rights secured by the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment, United States Constitution:

> No person...shall be...deprived of life, liberty, or property, without due process of law; ...

Fourteenth Amendment, United States Constitution:

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law; ...

Ga. Code Ann. §59-201:

> Qualifications of grand jurors, incompetency of certain public officers to serve: All citizens of this State, 18 years of age or older, being neither idots, lunatics, nor insane, who

have resided in the county for six months preceding the time of serving, and who are the most experienced, intelligent and upright persons, are qualified, and liable to serve as grand jurors, unless exempted by law: Provided, however, that all elected public officers and officials, county commissioners, tax receivers, tax collectors, members of the county board of education, county school commissioners, judges of the probate courts, and county treasurers shall be incompetent to serve as grand jurors during their respective terms of office: Provided, further, however that persons who have been convicted of a felony, and who remain unpardoned or whose civil rights have not been restored are incompetent to serve as grand jurors.

Ga. Code Ann. §59-106:

At least biennially, or, if the judge of the superior court shall direct, at least annually, of the first Monday in August, or within 60 days thereafter, the board of jury commissioners shall compile and maintain and revise a jury list of intelligent and upright citizens of the county to serve as jurors. In composing such list the commissioners shall select a fairly representative cross-section of the intelligent and upright citizens of the county from the official regis-

tered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the intelligent and upright citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including intelligent and upright citizens of any significantly identifiable group in the county which may not be fairly representative thereon.

After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number of the most experienced, intelligent and upright citizens, not exceeding two-fifths of the whole number, to serve as grand jurors. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, except as otherwise provided herein, and no new names shall be added until those names originally selected have been completely exhausted, except when a name has already been drawn for same term as grand juror shall also be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead.

STATEMENT OF THE CASE

The Petitioner, TONY B. AMADEO, was accused of shooting James D. Turk, Sr. during the course of an attempted armed robbery on September 29, 1977, in Putnam County, Georgia, thereby causing Mr. Turk's death.

On November 30, 1977, the Petitioner was convicted of the capital felony of murder and of the felony of criminal attempt to commit armed robbery. The Petitioner was sentenced to the death penalty on the charge of murder and was sentenced to a term of 10 years on the charge of criminal attempt to commit armed robbery. A Motion for New Trial was filed on December 21, 1977, and overruled on September 18, 1978, by the trial court. Notice of Appeal was filed on behalf of Petitioner on October 17, 1978, and the appeal was docketed with the Supreme Court of Georgia on November 28, 1978.

The Georgia Supreme Court affirmed the Petitioner's conviction and sentence in a decision rendered on May 2, 1979, Amadeo v. The State, 243 Ga. 627 (1979). On May 29, 1979, the Petitioner's Motion for Rehearing was denied by the Georgia Supreme Court.

On January 30, 1980, a Petition for Habeas Corpus was filed in the Superior Court of Putnam County, Georgia, requesting an evidentiary hearing. On February 29, 1980, this Petition was summarily denied by the Honorable Joseph P. Duke of Putnam County. On March 28, 1980, the Petitioner filed an Application for a Certificate of Probable Cause. This Application was denied on September 10, 1980. A Motion for Rehearing was subsequently denied on September 24, 1980. It is from this denial that the Petitioner seeks redress with this present application. Subsequent to the Petitioner's trial and conviction the entire jury lists involved in his indictment and trial were found to be unconstitutionally composed as a matter of fact and law by the United States District Court for the Middle District of Georgia in the case of Willie Bailey, et al v. Roy L. Vining, et al, Ga. Number 76-199-MAC. This jury issue was raised in the state habeas corpus action by the Petitioner.

REASONS FOR GRANTING THE WRIT

ISSUES RAISED IN STATE HABEAS CORPUS PROCEEDING.

THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The Jury List and Box From Which Petitioner Tony Amadeo's Jury was Drawn Were Unconstitutional as a Matter of Fact and Law

The jury list and box from which the trial jury in this case was drawn were found to be unconstitutionally composed as a matter of fact and law by the United States District Court for the Middle District of Georgia in the case of Willie Bailey, et al v. Roy L. Vining, et al, Ga. Number 76-199-MAC. This defect was a violation of the Georgia law applicable, Ga. Code Ann. §59-108, as well as a violation of United States Supreme Court decisions.

Attached to this Petition is Appendix "B" which is the Order of the Court in the above-cited case as well as a transcript of the applicable portion of the evidentiary hearing, attached hereto as Appendix "C".

The conclusion of this case is very clear. The jury source involved in Petitioner's case was tainted, as the list and box were not constitutionally valid.

The Court found in the above-cited case that there had been intentional under-representation of blacks and women which amounted to a systematic exclusion of discrete groups in the community.

The Federal Court for the Middle District of Georgia received a memorandum written by the prosecutor's office of Putnam County, Georgia. This handwritten memorandum, attached as a part of Appendix "D", instructed the jury commissioners to put numbers of blacks on an under-represented basis on the lists, but within the guidelines set by the case of Swain v. Alabama, 380 U.S. 202, 13 L.Ed.2d 759, 85 S.Ct. 824 (1964), which held

that 10% disparity was not enough to make out a prima facie case on percentages alone, and the case of Preston v. Mandeville, 428 F.2d 1392 (5th Cir. 1970) which held that 15% was enough to make out a case. The handwritten memorandum it is clear, puts the prearranged figure in this range. The result is a list which is not representative, but which would discourage or prevent jury challenges.

While this procedure was an ingenious method of under-representing women, blacks and youth by purposeful selection on the part of the State and the jury commissioners, it denied the Petitioner the right to be judged by a jury of his peers.

The concept of the right to be judged by a jury of one's peers is as old as the Magna Carta. The concept has been a continuing and refining element of American law. The United States Supreme Court, in 1880, defined the fundamental nature of the right in the case of Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 665 (1880). The Supreme Court states:

> The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine: that is, of his neighbors, fellow associates, persons having the same legal status in the society as that which he holds.

It is now clear as a matter of law that to determine if a jury is a constitutionally acceptable cross-section of the community, or a jury of the defendant's peers, there must be a look beyond facially valid statutes and there must be an inquiry into the practices of jury commissioners in order to assure the Court that the Constitution has not been subverted. Neal v. Delaware, 103 U.S. 370 (1880); Martin v. Texas, 200 U.S. 316 (1905); Brownfield v. South Carolina, 189 U.S. 426 (1902); Whitus v. Georgia, 385 U.S. 545, 551, 87 S.Ct. 643, 17 L.Ed.2d 599 (1967), and Castaneda v. Partida, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977).

The fact that the defendant was not a minority person or among the class of persons under-represented on the jury, does not diminish his right to have the constitutionally acceptable cross-section of the community on the jury list. Taylor v. Louisiana, 419 U.S. 522, 42 L.Ed.2d 690, 95 S.Ct. 692 (1975).

As the United States District Court for the Middle District of Georgia found in the Bailey case, the memorandum which rejected the lowest number of blacks, women and youth that could be placed on the jury in order to "get by", was evidence of discrimination. (See attached Orders of the U.S. District Court for the Middle District of Georgia, as Appendices "E" and "F".) The further conclusion of the U.S. District Court was that the jury list could not be used to provide jurors for any further criminal trials.

There was No Waiver of Defendant's Right to a Constitutionally Composed Jury Because There Was No Opportunity to Discover the Purposeful Discrimination

The Georgia Courts have recently taken a strict view on the timing of challenges to the jury. Anderson v. State, 223 Ga. 174, 154 S.E.2d 246 (1967). The Georgia Supreme Court has held that if the defendant is represented by counsel at the committal hearing and does not raise the grand jury issue before indictment, it is deemed waived. Hayes v. State, 138 Ga. App. 666 (1976); McHan v. State, 232 Ga. 470, 471(2), 207 S.E.2d 457 (1974); Scott v. State, 121 Ga. App. 458 (1970).

The various cases in the Georgia Court of Appeals and Georgia Supreme Court decided after 1968 were decided on the same analysis as Anderson, even though Anderson was reversed by the United States Supreme Court in 1968. See Anderson v. Georgia, 390 U.S. 206, 19 L.Ed. 1039, 88 S.Ct. 902 (1968). The U.S. Supreme Court simply reversed the Georgia Supreme Court, citing Whitus v. Georgia, 385 U.S. 545, 17 L.Ed.2d 599, 87 S.Ct. 643. While the Whitus case reversed two Georgia convictions on both grand jury and traverse jury issues, there was not a clear ruling

on the issue of waiver by untimeliness. The status of Georgia law on timeliness and waiver seems to be unclear in that the Anderson case was reversed, but there is no specific language relating to waiver.

The law in Georgia is clear, however, that failure to timely raise the objection may be deemed not a waiver under special circumstances. In Barrow v. State, 239 Ga. 162(1) (1977), the Court stated:

> Barrow was indicted on April 21, 1975. Although he was represented by counsel from February 11, 1975, no motion was made regarding the composition of the grand jury. Barrow was tried, convicted and given the death sentence for murder, but his conviction was overturned by this court and sent back for a new trial. Barrow v. State, 235 Ga. 635, 221 S.E.2d 416 (1975). Barrow then filed his challenge to the grand jury, which the trial court overruled as not timely. We however, because of the special facts of this case, reversed the trial court on this point.
>
> The general rule is that the grand jury composition must be challenged prior to indictment unless the defendant shows he had no actual or constructive notice of the illegality. Sanders v. State, 235 Ga. 425, 219 S.E. 768 (1975); McHan v. State, 232 Ga. 470, 207 S.E.2d 457 (1974); Williams v. State, 210 Ga. 665, 82 S.E.2d 217 (1954). Failure to do so is deemed a waiver. Cobb v. State, 218 Ga. 10, 126 S.E.2d 231 (1962). Under these general rules, Barrow's challenge would indeed have been filed too late.

> We have also said, however, that "it is a lawyer's proper function and duty to determine whether it is to the interest of his client to raise the issue of systematic exclusion. Cobb v. State, 218 Ga. 10, 24(6), 126 S.E.2d 231 (1962)." Burke v. Whitley, 221 Ga. 108, 109, 143 S.E.2d 171 (1965). In his testimony at the hearing on Barrow's motions, the public defender, who had represented Barrow at his first trial, made very clear that he did not consider making such a challenge, even though he realized that under our cases he probably would have been successful.

While the Barrow case mixes the question of effective assistance of counsel with the timelinesss and waiver issue, the relevance of this case to the one sub judice is clear. The rule that the challenge to the grand jury must be made prior to indictment is a general, and not an absolute, rule. It is also clear that lack of notice is an exception. In the case sub judice the matter turns in a different way. Here the lawyers, no matter how effective, could not have known of this insidious defect in the jury selection process, until it was unearthed in the federal proceeding. The lawyers raised the issue in the trial court below by way of notice of appeal and enumeration of error, at the earliest possible time after notice of the defect.

The above analysis would apply as well to the timeliness question of a challenge to the array of the trial jury under the applicable Georgia law, Ga. Code §59-803. Bryan v. State, 124 Ga. 79, 80, 52 S.E. 298 (1905); and Williams v. State, 31 Ga. App. 173(3), 120 S.E. 131 (1923). Specifically, the reason that the defendant's lawyer could not have known of this defect was that an examination of the statistics on the representation of various cases would not have led the lawyers to conclude that a

prima facie case on the percentage disparity could be made out. In fact, this was the apparent purpose of the memorandum. Further, there was available to the defense counsel no means to discover this unofficial directive or memorandum which was not a part of the public record.

Therefore, there was no notice of the actual defect and no means to discover it. This means that it would have been impossible to discover the defect before trial. To conclude otherwise would put an onerous and perhaps impossible task on the trial defense counsel and the court. The conclusion that it might have been possible for defense counsel to discover this in a hearing would put defense counsel in the position of having to bring a jury challenge in every case and conduct a full hearing calling for an examination of every person connected with the jury selection process, including the District Attorney, his staff, the judge who drew the jury and a host of other court personnel.

The burden placed on the defendant unrepresented by counsel by such a conclusion is obvious. Even when represented by counsel, the defendant cannot rely on the failure of his lawyer to raise such claims to be available in habeas corpus. Durham v. State, 239 Ga. 697, 701(6) (1977). If defense counsel and defendant are deemed to have waived such a hidden issue by failure to timely raise such issues, the increased burden on the administration of justice is obvious.

A persuasive holding on the relationship of timeliness and the concern for orderly administration of justice is found in New York v. Attica Brothers, 359 N.Y.S.2d 699:

> The cases, however, leave no doubt that a defendant's constitutional and common law right to a trial by a jury of his peers and to the equal protection of the laws under the Fourteenth Amendment created as an essential corollary, the right to

assert the failure of those charged with the jury selection process to comply with the constitutional guarantee in all state statutes, rules and regulations enacted to implement it.

The objections to the timeliness of the motion into the lack of statutory authority for its initiation must yeild to the overriding consideration that a present resolution of this question is necessary for the orderly administration of justice.

The Right to a Jury of One's Peers is so Fundamental That the Waiver Doctrine Should Not be Applied In Death Penalty Cases in which Jury Defects are Discovered

The function of a jury is clearly different in a death penalty case from any ordinary trial. In Georgia, in a death penalty case, the jury serves two equally important functions. For one, it determines guilt or innocence, and secondly it determines whether punishment is to be life imprisonment or death by electrocution. In this latter role, the jury acts as the conscience of the community in dispensing both punishment and mercy.

The fact that the death penalty is different from other sentences is clear in the eyes of the law. Woodson v. North Carolina, 428 U.S. 280, 287 (1976); and Gregg v. Georgia, 428 U.S. 153 (1976). The necessity for the Georgia Supreme Court to review the action of juries in imposing the death penalty, as held in Gregg, supra, is heightened in this case in which the jury that imposed the verdict and penalty was not a cross-section of the community and was unconstitutional. This automatic review function of the Supreme Court is one of the reasons that the U.S. Supreme Court approved the death penalty statute in Gregg, supra, as correcting the problems raised in Furman v. Georgia, 408 U.S. 238, 313 (1972). Since the death penalty in the case sub judice was imposed by an unconstitutional jury, the Georgia Supreme court in its decision could not properly review

the case to determine whether the sentence was excessive or disproportionate to the sentence imposed in similar cases under Georgia law. Ga. Code Ann. §27-2537(C)(3); Gregg v. Georgia, supra, 428 U.S. 204. The reason for this is because the Georgia Supreme Court would be forced to compare the sentence with those imposed by properly composed juries.

The right to have a jury of one's own peers rises to a higher standard in a death penalty case because of the jury's role in dispensing mercy. This higher standard makes this right so fundamental that this Court should reverse this conviction and sentence because the defendant was denied a jury of his peers to dispense mercy to him in this case.

The Action of the State in Establishing A Jury List that, Under Current Law Would Not Present A Prima Facie Case of Systematic Exclusion by Numbers Alone, Shows Intentional Discrimination

A lawyer considering a challenge to the grand and traverse juries, acting reasonably, would have concluded in the present case that the disparity of 11% of under-representation of blacks in the jury pool would not support a prima facie case of exclusion. The current law is that 14% will be sufficient to make out the case. Preston v. Mandeville, 428 F.2d 1392 (5th Cir. 1970).

A lawyer, acting reasonably, would consider the single most important factor in establishing a prima facie case of systematic exclusion of a cognizable group of people from the jury pool to be the under-representation of the particular category of people in the challenged jury pools.

The disparity of the percentage representation of the group allegedly discriminated against in the jury pool and the percentage of the group in the community determines whether or not the group has been under-represented and systematically excluded. Taylor v. Louisiana, 95 S.Ct. 692 (1975); Whitus v. Georgia, 385 U.S. 545, 87 S.Ct. 643 (1967); Turner v. Fouche, 396 U.S. 346, 90 S.Ct. 532 (1970); McGhee v. King, 518 F.2d 791 (5th Cir. 1975); Sanford v. Hutto, 394 F.Supp. 1278 (E.D. Ark. 1975).

In many cases statistical disparity alone is so marked as to present a prima facie case of systematic exclusion. However, where the statistical disparity suggests the possibility of discrimination the courts have looked for "other evidence of systematic exclusion." Sanders v. State, supra, at 859.

As the Court in the Fifth Circuit stated in Sanford v. Hutto, 394 F.Supp. 1278, 1282 (5th Cir. 1976), "What constitues a substantial disparity depends largely on how this disparity occurred and if it results from the use of subjective criteria."

Accordingly, the courts have also considered the following factors as indicative of whether a particular group has been systematically excluded from a jury pool: selection in a manner such that the commissioners know the race, sex and/or age of the potential jurors, Jones v. Georgia, 389 U.S. 24, 88 S.Ct. 4 (1967), Whitus v. Georgia, supra; a selection process which uses subjective rather than objective criteria and judgments, Turner v. Fouche, supra; a selection process in which the opportunity for discrimination exists, Turner v. Fouche, supra; failure of the State to explain the disparity which exists, Whitus v. Georgia, supra.

The lawyer does not have access to this information without investigative resources or a lengthy and thorough hearing to attempt to "discover" these factors. In the case of an indigent, the potential for discovery of these additional factors, when a showing from the numbers alone cannot be made, is very remote.

The act of the State in structuring the disparity low enough to prevent the presentation of the prima facie case, but still guaranteeing systematic exclusion of blacks, women and youths shows that discrimination was intended as to the structure of the jury list in the present case. The Georgia Supreme Court rendered an initial decision in this case on May 2, 1979, in Amadeo v. State, 243 Ga. 627, 629 630(4). The Georgia Supreme Court held, as to the present issue, in the following manner:

> Amadeo's fourth enumeration of error relating to jury composition is without merit as his challenge comes too late. Goodwin v. Hopper, 243 Ga. 193 (S.E.2d) (1979); Harris v. Hopper, 243 Ga. 244 (1979); Holton v. State, Case No. 34272, decided March 6, 1979. The case of Barrow v. State, 239 Ga. 162(1) (236 S.E.2d 257) (1977), is to be distinguished from the present case in that Barrow's conviction and sentence had been set aside on the appeal, after which he filed and pursued timely challenges to the arrays then brought his case back to this court by interlocutory appeal after denial of his challenges brought prior to trial and conviction. Barrow did not take his chances with unchallenged grand and traverse juries then attempt to challenge the arrays after conviction, this being the trial tactic that is precluded by such decisions as Francis v. Henderson, 425 U.S. 536 (96 S.Ct. 1708, 48 L.Ed.2d 149) (1976) and Goodwin v. Hopper, supra. The fourth enumeration is without merit.

This decision by the Georgia Supreme Court is a holding violative of Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution. Petitioner is being denied due process of law in that the improper composition of the jury lists is depriving him of his liberty, and ultimately his life, without due process of law. This Honorable Court should analyze the Georgia Supreme Court's apparent misinterpretation of controlling authority under the

material facts involved in the particular indigent's case. The improper composition of the jury lists in Putnam County has deprived Petitioner of his right to a fair trial in that he was not tried by a jury that represented a cross-section of the community.

The Petitioner was indicted by an unconstitutionally composed grand jury in Putnam County, Georgia. He was tried by a jury chosen from an unconstitutionally composed panel that did not represent a proper cross-section of the community in Putnam County. The constitutional error was not discovered until after trial, but was raised at the earliest possible time after notice of this error. The action of the State of Georgia, by way of the improper composition of the grand and petit juries available at the time of Petitioner's trial, and by way of the decision of the Georgia Supreme Court in its failure to review the challenge to the jury composition because of its alleged untimeliness, deprives the Petitioner of his life and liberty in contravention of his due process rights under the Fourteenth Amendment to the United States Constitution. The decision of the Georgia Supreme Court, under the applicable facts in the instant case, should be reversed. The overly technical application of the waiver doctrine should not apply to absolve the Court from an examination of the merits of the claim when the penalty exacted here is the death of the Petitioner by electrocution. The issue was resolved by the Georgia Supreme Court with the simple unconstitutional admonition that "you are too late". The merits of the issue were never reached.

In Gardner v. Florida, 430 U.S. 349, 51 L.Ed.2d 393, 97 S.Ct. 1197 (1977), this Court fully recognized that the death penalty is a peculiar breed of sentence when it said:

> First, five Members of the Court have now expressly recognized that death is a different kind of punishment from any other which may be imposed in this country. Gregg

v. Georgia, 428 U.S. 153, 181-188, 49 L.Ed.2d 859, 96 S.Ct. 2909 (opinion of Stewart, Powell, and Stevens, JJ.); see id., at 231-241 (Marshall, J., dissenting); Furman v. Georgia, 408 U.S. at 286-291, 33 L.Ed.2d 346, 92 S.Ct. 2726 (Brennan, J., concurring), 306-310, 33 L.Ed.2d 346, 92 S.Ct. 2726 (Stewart, J., concurring); see id., at 314-371, 33 L.Ed.2d 346, 92 S.Ct. 2726 (Marshall, J., concurring). From the point of view of the defendant, it is different in both its severity and its finality. From the point of society, the action of the

[430 U.S. 358]

sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.

The Petitioner respectfully implores this Honorable Court to take this last mentioned language from Gardner, supra, into account and to give it ample and weighty consideration in its decision on the legal propriety of the Georgia Supreme Court's affirmance of the death penalty in Petitioner's case.

CONCLUSION

For the within and foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Georgia

Supreme Court in its denial of the Petitioner's Application for a Certificate of Probable Cause to appeal the denial of his habeas corpus relief that was sought in the trial court.

Respectfully submitted,

GARLAND, NUCKOLLS & CATTS, P.C.

By: /s/ Edward T. M. Garland
EDWARD T. M. GARLAND

1012 Candler Building
Atlanta, Georgia 30303
(404) 577-2225

/s/ Wm M Warner
WILLIAM M. WARNER

1010 Angelo Court
Atlanta, Georgia 30319
(404) 261-5519

ATTORNEYS FOR PETITIONER

APPENDICES

Application No. 1202

SUPREME COURT OF GEORGIA

ATLANTA, September 10, 1980

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

TONY B. AMADEO V. EUGENE RUSSEAU, SHERIFF

Upon consideration of the application for a certificate of probable cause to appeal filed in this case, it is ordered that it be hereby denied. All the Justices concur, except Hill, J., dissents.

The stay of execution issued by this Court on March 14, 1980, having been granted pending disposition of this Application, is now hereby dissolved.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Joline B. Williams Clerk.

APPENDIX "A"

Amended

FILED
5:00 P.M.
AUG 28 1978
Deputy Clerk, U.S. District Court
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

WILLIE BAILEY, et al.,	:	
Plaintiffs,	:	CIVIL ACTION NO. 76-199-MAC
vs.	:	
ROY L. VINING, et al.,	:	
Defendants.	:	

ORDER

The defendant jury commissioners on August 22, 1978, submitted a proposed plan for selecting a grand and petit jury list for the Superior Court of Putnam County that does not suffer from the constitutional deficiencies heretofore found by the court.

The submitted plan having been found to be in accordance with the Constitution and the laws, it is hereby approved and the defendant commissioners are HEREBY ORDERED to proceed to revise said jury lists.

This order in no way constitutes advance approval of the list as recompiled.

The commissioners at such time as they have completed revising the jury lists shall then submit a factual report to the court as to the manner in which the list was revised. The court will then consider whether or not the lists have any further constitutional deficiencies.

SO ORDERED, this the 28th day of August, 1978.

Wilbur D. Owens, Jr.
United States District Judge

WILLIE BAILEY, et al.) C. A. No. 76-199-Mac.

Vs.)

ROY L. VINING, JR., et al.)

EVIDENTIARY HEARING

HON. WILBUR D. OWENS, JR., U.S. District Judge, Presiding;

August 15, 16, 17, 1978, Macon, Georgia

APPEARANCES:

For the Plaintiffs: MR. CHRISTOPHER CONTUS
MR. NEAL BRADLEY
52 Fairlie Street, N. W.
Atlanta, Georgia 30303

For the Defendants:

County Commission: MR. JESSE COPELAN, JR.
P. O. Box 109
Eatonton, Georgia 31024

City Council: MR. D. D. VEAL
P. O. Box 368
Eatonton, Georgia 31024

Board of Education: MR. WAYNE B. BRADLEY
Sanford Building
Milledgeville, Ga. 31061

MACON DIVISION

WILLIE BAILEY, et al.) C. A. No. 76-199-Mac.

Vs.)

ROY L. VINING, JR., et al.)

EVIDENTIARY HEARING

HON. WILBUR D. OWENS, JR., U.S. District Judge, Presiding

August 15, 16, 17, 1978, Macon, Georgia

APPEARANCES:

For the Plaintiffs: MR. CHRISTOPHER COATES
MR. NEAL BRADLEY
52 Fairlie Street, N. W.
Atlanta, Georgia 30303

For the Defendants:

County Commission: MR. JESSE COPELAN, JR.
P. O. Box 109
Datonton, Georgia 31024

City Council: MR. D. D. VEAL
P. O. Box 368
Datonton, Georgia 31024

Board of Education: MR. WAYNE B. BRADLEY
Sanford Building
Milledgeville, Ga. 31061

A No.

Q In 1977, after Judge Jackson ruled that the jury list needed to be reconstituted, did you receive a memorandum from the office of the solicitor?

A Yes.

Q I will show you what's been marked as Plaintiffs' Exhibit A and ask if you could identify it.

A Yes sir, there's some parts of it missing, but it's immaterial.

Q Sir?

A There's some parts of this copy you have - you don't have some parts on there that I have on a copy of mine. It's immaterial though, I think.

THE COURT: Let me see the complete copy.

Q MR. COATES: In reconstituting the jury list, Mr. Dennis, did the jury commissioners aim at the figures suggested there by the writer of this memorandum?

A Yes, they did. I turned that list over to the chairman of the jury commission.

Q With regards to grand jury, the writer of that memorandum suggested 101 black persons be put on the grand jury list?

A Yes.

to 31.4 percent?

A Correct.

Q With regards to --

THE COURT: Is this the way the present jury box is made up in your county?

THE WITNESS: Yes sir.

MR. COATES: Your Honor--

THE COURT: Y'all are wasting a lot of time over in that county trying anybody for a crime.

MR. COATES: Your Honor, that's the solicitor. We would suggest that the writer of that memo is telling the jury commissioners how to under-represent blacks but avoid a prima facie case under Fifth Circuit case law.

THE COURT: Yes sir, looks like it.

MR. COATES: No further questions. I'm sorry - excuse me.

Q MR. COATES: Mr. Dennis, is this exhibit a copy of the memo that was received from the solicitor's office?

A Yes, it is.

MR. COATES: No further questions.

THE COURT: All right, you gentlemen want to examine the witness?

Traverse Jury

125 B.F
75 W F
8 W F (18-24 yrs of age)
04 B.F (18-24 yrs of age)
= 212 Female

8 W.m. (18-24 yrs of age)
4 B.m. (18-24 yrs of Age)

Grand Jury

46 B F (9) 37
30 W F (17) 93
2 B F (21-25 yrs of Age.
2 B m .. .. ..
2 W F .. .. ..
2 W m .. .. ..

Result:

Traverse Jury

485	males	60%	pop. %	48.4
322	Women	40%	.. ..	51.6
298	Black	37%	pop. %	48.1
509	White	63%	.. ..	51.6
24	18-24 age	2%	.. .	17.2

Grand Jury

226	males	70%	pop. %	48.4
96	Women	30%	.. ..	51.6
101	Black	31.4	pop. %	48.1
221	white	68.6	.. ..	51.6

IN THE
UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

WILLIE BAILEY, et al.,

Plaintiffs,

v.

ROY L. VININGS, JR., et al.,

Defendants.

No. 76-199-MAC.

Filed 9:25 AM
August 17, 1978
Lee Cannon
Deputy Clerk

ORDER

Plaintiffs having moved that the Jury Commissioners of Putnam County, Georgia, be added as parties defendant* in this action, and the Court having heard evidence herein regarding the make-up of the jury lists in Putnam County, the Court finds that the motion is due to be granted and it is hereby ordered that the Jury Commissioners of Putnam County, Georgia, be made defendants in this action.

UNITED STATES DISTRICT JUDGE

August 17, 1978

* HARRY HUDSON
HOWARD HARRISON
J. W. REID
HENNIE SADLER
RUSSELL COPELAN
VIRGINIA WINSLETTE

RE: JURIES

AUG 17 1976

Deputy Clerk, U.S. District Court
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

BAILEY, Willie, HARGROVE, Robert, THOMPKINS, George W., and DANIEL, Walter, individually and on behalf of all those similarly situated,	C. A. No. 76-199-Mac.
Plaintiffs	
Vs.	
VINING, Roy L., Jr., BAUGH, W.H., RIDLEY, Donald; et al.	
Defendants	

O R D E R

Maybe it would be appropriate for us to take a minute and talk a little bit about this problem. Do we have all the jury commissioners present?

MR. COPLAND: Yes sir.

THE COURT: Of course you all were not present during the past two days. Among the things that the Court listened to was evidence concerning a memorandum submitted to you ladies and gentlemen as jury commissioners by either the solicitor or the district attorney or somebody in his office in which it was suggested to you that you put into this jury box a certain number of names of men and women and of persons of the Caucasian race and of persons of the Negro race. In addition, that memorandum indicated that the person writing it was suggesting that the object be to get a jury panel, that is those persons in the courtroom on a given

day when court was to commence, composed from a racial percentage and a sex standpoint the same as the population of your county is.

Well, the person who wrote you that memo frankly didn't study the law at all in doing that because that's just not the law. Let me tell you in common sense what I believe the law to be. Judges are not infallible just like lawyers are not, but it does happen that in the Federal Court system I believe we get more of this type of problem than most other courts would have because it's a constitutional problem.

The concept, first of all, and again, this is laid out by the Supreme Court of the United States, is that every citizen has a right, a constitutional right, to serve on a jury. Translated into everyday language that means that you ladies and gentlemen, as jury commissioners, have an obligation to see that every person in your community is fairly considered. You can't, as jury commissioners, eliminate anybody just because you want to. In other words you can't come up and have this list that says well, we are only going to consider "x" number of people in our community, because you are depriving those you don't consider automatically of the right they have to be considered. That's where that memo gets off on the wrong foot. You have already eliminated a substantial number of people in the community. I've forgotten the figures but it is a right large number.

If you want to look at it from the standpoint of how do we go about doing what we are required to do, that is consider everybody in the county, and end up with the number of people that we are required to have in the jury box -- you have

got to consider every person who is on the list of registered voters and you've got to end up with a jury list that has on it at least one-half, numerically - because the State says now one-half - of all those names on the list. If you've got 10,000 names and you want to end up with 5,000, how do you go about doing it?

Since you ladies and gentlemen are not supposed to make a conscious selection, that is you are not supposed to choose between Tom and Dick just because you like Tom and you don't like Dick or vice versa, about the only way you can do it is to come up with some system so that you yourselves don't make a human choice between people. About the only one I have seen that has gone up through the courts and has been approved is what's similar to the system devised by Congress that is used in the Federal Courts. Here basically is the way we do it. Again, this is determined by law. I didn't create it; I'm just telling you what it is.

We are required, through the Clerk of the Court, to start with the registered voters list. If we have 10,000 names on a list and we need 2,000 in the box, we are going to use one-fifth of the list. We use a computer. Those names are alphabetized and we rig the computer to pull out every fifth name on the list. To make sure that one of us is not choosing any of those names, we draw out of a hat between the numbers one and five, so we will know where to begin. Suppose we draw a 2 - then we take the second name on the list and we skip five names all the way through the list. So we haven't made any choice, you see. The names are just there because they were

alphabetically so arranged and because whoever drew the beginning name out of the hat and selected it the way it was selected again purely by chance. We then send each of those 2,000 names a form, and the law requires those people to return the form. They don't have a choice about it. It even authorizes us to send the United States Marshal out to the house of the person who got the form and compel him to complete the form.- We send them the form and tell them they have to complete it and send it back. And on that form are the questions designed to determine whether or not they are each qualified as a matter of law to be a juror. It says "have you ever been convicted of a felony?" Yes or no. "Can you read; can you write; can you understand the English language. Are you between certain ages . . ." The statutory qualifications, similar to what's set forth in the Georgia law.

When those forms comes back our Clerk can't do but one thing, and that is see if according to the form that name ought to go in the box, and if according to that form the name is qualified, he has to put the name in the box. Then when we want a jury we simply then have the Clerk come into the courtroom in open court and draw names out of that box that are on little slips of paper.

That basically is all that it amounts to. In other words it is a mechanical process. It's not the Clerk deciding between human beings. The only difference between the Federal law and the State law is that the State law doesn't provide that persons who receive these forms must return them. It doesn't authorize you ladies and gentlemen to send the sheriff out to the house to find out why they have not returned them.

Now the Federal courts in applying the Georgia procedure, and when I say Federal courts I mean beginning with the Supreme Court of the United States in a case out of Tolliver County where I represented the county before I came on the Bench, and I have given the gentlemen here a copy of it, said that there is an obligation on the jury commissioners when those forms are sent out to find out that why those that don't come back were not sent back. In other words the typical thing that happens is if you ladies and gentlemen, for instance, take every other name on the list because you only want half, so let's start and assume you alphabetize the whole list of registered voters, and the State law says that you have got to have half of those, so if you were to take every other name on the list and you mail out a jury questionnaire form to all of those persons, well if 20 percent of those persons don't send the form back or the forms don't return then you've got to do something to find out why they didn't come back. Of course you are going to find that some of them don't come back because the person whose name is on the list is now deceased. You are going to find out that some of those people have moved. You are going to find out that some of them just don't want to send the form back. But nevertheless you have to account for it. You just can't sit back and say well, they didn't send the form to us and we are going to forget about them.

This procedure was recently used in Peach County, Georgia, and I had a copy of that made for you gentlemen too, and in that instance the jury commissioners did not find out

why the forms that were not returned failed to come back and I okay'd it without requiring it and my decision was reversed. That only happened about three weeks ago. So there's no question, ladies and gentlemen, that what I am giving you as a matter of just an overall commonsense version of this is not only old law but new law.

Now the difficulty is, of course, since you all are required to come up with one-half, there is no way you can determine how many of the forms that you send out are going to be those of persons who have moved; you may have some registered voters who really don't reside in your county, they are just still on your list. You might have people who work in Atlanta and they are still voting back in their old home county. So there's no way to achieve one-half that you can start out with one-half. You've got about 2,000 names on your list? Registered voters.

MR. COPLAND: 4500.

THE COURT: 4500 registered voters. So you are trying to get 2,250 names in the jury box under State law. As a practical matter - again, this is just a suggestion, it would seem to me if you all came up with a questionnaire form and mailed it to every one of your 4500 people and put in there a right plain letter saying that the box is being revised under order of the United States Court and that you, as a prospective juror are required to complete and return this form, that you might get a better response than otherwise. You've got to be right elementary, I think. When you get the forms back you can then look at all those forms and separate those into two groups, one where they are statutorily qualified

and one statutorily disqualified. If you ended up with 3500 names and you want to get 2250, then simply line them up alphabetically and make a - if you want to select one out of two names, or two out of three names, just do it by coming down the list in alphabetical order and put them in the box.

Now of course you have an obligation to make sure that those names represent a cross-section, so you then would have to determine from a racial standpoint what your result is. Then the law says if you have ended up with a jury box that doesn't represent, racially and sexually too, generally the same overall composition as the county that then you do have to make a conscious effort to correct the situation. I believe that generally is what you are going to have to do to correct it.

When is the next term of Superior Court?

MR. COPLAND: The third week in September.

THE COURT: Well, there's no question in the Court's best judgment that the jury box as it now exists is unconstitutionally composed and cannot be further utilized for any purpose until it is completely reconstituted, both in accordance with the statutes of the State of Georgia and the decisions of the Supreme Court of the United States and of the other courts to the extent they may supplement and add to the decisions of the Supreme Court.

For the purpose of seeing that that is done, the Court will order that the defendant jury commissioners within one week prepare and present to the Court a proposed plan and procedure for reconstituting this jury box, and that when that

has been submitted to the Court and opposing counsel have had an opportunity to comment thereon, the Court will then, by order, specify the manner in which this box will be revised. The jury commissioners will then be ordered to proceed to do it in that manner.

When the process has been completed the order will further provide that the jury commissioners will file a report with the Court as to the result, that is a copy of the jury list as well as a report of how they went about filing it, and at that time there will be a further hearing as to whether or not the end result is constitutionally sufficient. But only after it has been determined to be constitutionally sufficient may it be utilized for the purpose of court actually functioning any further.

MR. COPLAND: On your racial percentage and also on the sex percentage, shall we project the '70 figures to the date and also how much variance on the percentage are we talking about in there? Two or three percent, or what?

THE COURT: There's no absolute magic. You can see in the Peach County case there's about a ten percent variance. The Fifth Circuit disapproved of that even though this Court approved it.

MR. COPLAND: Also, do you want us to project the percentage of blacks and percentage of women?

THE COURT: Well, I think what we might do is let's stop at this point and let this order be fashioned and maybe when we get through with all our other problems we will all talk in Chambers a little bit about how you are going to

accomplish it.

Again, just because you do it the way the Court suggests doesn't mean that that's the absolute last word. Bear that in mind. I wish I could promise you that it is. All I can tell you is the way we've done it before and what the result has been.

Of course further, ladies and gentlemen, the Court - that is ladies and gentlemen of the jury commission, the Court observed yesterday that one of the basic problems in Putnam County is that the source of names for your jury box is the list of registered voters, and the list of registered voters is still maintained on a racially segregated basis. The Supreme Court of the United States held years ago in cases coming out of the State of Georgia that when you end up with a disproportionate number of blacks versus whites on a jury list and the source of the list was another list kept in a racially segregated fashion, that there is a presumption that those who compiled the jury list intentionally discriminated in doing so. So the first thing you've got to do in this county is get rid of all of your records which are kept on a racially segregated basis.

Now the board of registrars are not parties to this case - I realize that - but at the same time the probate judge who is the superintendent of elections is. Frankly, I don't think it's necessary to add the board of registrars. It seems to me the superintendent of elections, with the powers given him under the election code and with the responsibility that he has, can require those registrars to no longer keep

anything on a racially segregated basis. And I think, as we have suggested, that that's got to stop today, not tomorrow. You've just got to go back and take all your names and put them on one list alphabetized, and leave off any designation by race. Now that obviously presents some commonsense problems to the jury commissioners, because the jury commissioners, when they get through with the process of compiling a jury list, they've got to look and see if the result from a racial standpoint represents the percentage that's in your county. So then you've got to go back and identify what we have just told you you can't use as a source. I share your concern over that.

So the Court's order as far as the jury commissioners is concerned, is expanded to include a direction to the probate judge that he instanter cause the registrars of this county to prepare a list of the registered voters, the names of which shall be in alphabetical order and shall contain no designation of race.

We realize this is a mechanical process, but your jury commissioners can't do anything until you finish with the list. It's going to be a week, unless they come forth sooner with a plan, before we finalize how they are going to go about doing it, but certainly within a week they will need your list. You also ought to transmit that list to the secretary of state as a substitute for whatever list you have heretofore transmitted. On the registration cards, either eliminate the designation or fill out a new card, one or the other. Of course there's got to be some designation if

y'all have the ability to put them together and take them apart again.

You all might find it feasible to combine your registration process. That, again, is up to you. That's something that Bibb County finally realized could be easier to handle. We now have one place to register for both city and county and they just simply separate the county people out of it. That might be something that would help you.

MR. COPLAND: Your Honor, Mr. Dennis, who is Clerk of Superior Court and also the Secretary of Board of Registrars has some questions.

THE COURT: Sure. Go right ahead, Mr. Dennis.

MR. DENNIS: I would like to ask you if we are supposed to go by the Georgia Code and use the exemptions that they set out in the Code?

THE COURT: Yes sir, you are required to do that.

MR. DENNIS: We don't need to send them questionnaires?

THE COURT: If you know that those persons are exempt, you do not need to send them a questionnaire. But when you get ready to report to the Court as to what consideration you gave those 4500 people you will need to say that of those 4500 ten were exempt because they were doctors, six were exempt because they were nurses or school teachers or mothers of infant children or whatever the category is. The problem is accountability.

MR. DENNIS: How about people that are on the [illegible] list that are under indictment but have not been

convicted?

THE COURT: Don't think you can eliminate them. When the court meets, of course, if their names come out of the box the judge takes care of that. He can eliminate them, but you can't.

MR. DENNIS: Am I to understand that we will not have a September term of Superior Court?

THE COURT: If the box is revised in time to do so--

MR. DENNIS: It can't be.

THE COURT: Then I don't believe the court can meet. That's what we had to do with Peach County. They just stopped until we got the job accomplished. That is, court can't meet for jury purposes. In other words your grand jury wouldn't be valid even if they met and neither would your trial jury, is what it amounts to.

SO ORDERED this 17th day of August, 1978.

United States Judge

80-5942

IN THE SUPERIOR COURT OF PUTNAM COUNTY

STATE OF GEORGIA

RECEIVED
JAN 29 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

TONY B. AMADEO,)
)
Petitioner)
)
V.)
)
SHERIFF EUGENE RESSEAU,)
)
Respondent)

ORDER

The court finds that defendant in his petition for writ of habeas corpus contends that the trial court's charge to the jury on the sentencing phase of the trial failed to clearly instruct the jury that if they found the presence of aggravated circumstances, they could still recommend a sentence of life imprisonment.

The court after careful reading of the charge of the trial judge finds that the presiding judge clearly informed the jury orally that they could, even if they found the presence of aggravating circumstances, recommend a sentence of life imprisonment. In addition to this, the trial court furnished the jury with a written document containing the three possible verdicts and that in this document it was clearly set out that the jury, even if they found the presence of aggravated circumstances, could still recommend a sentence of life imprisonment.

Defendant, in his second ground of his petition of writ of habeas corpus, complains that the entire jury list involved in his indictment and trial, both Grand and petit, was unconstitutionally composed.

This issue was raised by defendant on his post conviction appeal to the Supreme Court of Georgia and this matter was decided adversely to defendant. Amadeo v. The State, 243 Ga. 627, 629.

The Defendant's petition for writ of habeas corpus is hereby denied and petitioner is hereby remanded to the custody of the Sheriff of Putnam County, and the stay of execution granted in this case is hereby dissolved.

So ordered this 29TH day of February, 1980.

Judge, Superior Courts
Ocmulgee Judicial Circuit

Application No. 1202

SUPREME COURT OF GEORGIA

ATLANTA, September 24, 1980

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

TONY B. AMADEO V. EUGENE RUSSEAU, SHERIFF

Upon consideration of the Motion for Reconsideration filed in this Application, it is ordered that it be hereby denied.

All the Justices concur, except Hill, J., dissents.

SUPREME COURT OF THE STATE OF GEORGIA,

CLERK'S OFFICE, ATLANTA,

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Hazel E. Hallford, Deputy Clerk.

RECEIVED
DEC 23 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT FOR THE UNITED STATES

TONY B. AMADEO, :

Petitioner :

V. : CASE NUMBER 80-5942

EUGENE RUSSEAU, SHERIFF, :

Respondent :

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

The Petitioner, TONY B. AMADEO, who is now confined to the Putnam County Jail in Eatonton, Georgia, and who is under a sentence of death, asks leave to file the attached Petition for Writ of Certiorari to the United States Supreme Court without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 53.

The Petitioner's Affidavit in support of this motion is attached hereto.

GARLAND, NUCKOLLS & CATTS, P.C.

By: /s/ Edward T. M. Garland
EDWARD T. M. GARLAND

1012 Candler Building
Atlanta, Georgia 30303
(404) 577-2225

/s/ William M. Warner
WILLIAM M. WARNER

1010 Angelo Court
Atlanta, Georgia 30319
(404) 261-5519

ATTORNEYS FOR PETITIONER

RECEIVED
DEC 2 5 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

FOR THE UNITED STATES

TONY B. AMADEO, :

Petitioner :

V. : CASE NUMBER _____

:

Respondent :

PAUPER'S AFFIDAVIT

TONY B. AMADEO, Petitioner, being duly sworn, deposes and says:

(1) I am a citizen of the United States and the Petitioner in the above-entitled action.

(2) I desire to prosecute a review of the judgment entered by the Supreme Court of the State of Georgia on September 10, 1980, and affirmed on rehearing on September 24, 1980, pursuant to 28 U.S.C. §1257(3), but because of my poverty, I am unable to pay the costs of such a review.

(3) I believe I am entitled to the redress I seek by such a review, and that such a review presents substantial issues of deprivation of rights secured by the Constitution of the United States.

The nature of the question to be presented upon such a review is as follows:

WHETHER THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

I contend that the Supreme Court of Georgia erred in upholding my conviction and sentence.

WHEREFORE, Affiant prays that he may have leave to proceed in this Court on Petition for Writ of Certiorari in forma pauperis.

Tony B. Amadeo
TONY B. AMADEO

Sworn to and subscribed
before me this 19th day
of December, 1980.

Wm M. Warner
Notary Public

Notary Public, Georgia State at Large

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

RECEIVED
MAR 6 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NO. 80-5942

TONY B. AMADEO,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

SUSAN V. BOLEYN
Assistant
Attorney General

JOSEPH H. BRILEY
District Attorney

Please serve:

SUSAN V. BOLEYN
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3397

I N D E X

	Page
QUESTION PRESENTED.	1
STATEMENT OF THE CASE.	2
REASONS FOR NOT GRANTING THE WRIT	
PETITIONER'S ALLEGATION OF "LACK OF KNOWLEDGE" DOES NOT EXEMPT HIM FROM THE GEORGIA PROCEDURAL RULE REQUIRING A TIMELY CHALLENGE TO THE ARRAY OF THE GRAND AND PETIT JURIES AND THE GEORGIA SUPREME COURT PROPERLY DETERMINED THAT PETITIONER'S JURY CHALLENGES WERE UNTIMELY.	4
CONCLUSION.	11
CERTIFICATE OF SERVICE.	12

TABLE OF AUTHORITIES

Cases Cited:	Page
Amadeo v. State, 243 Ga. 627 (1979).	2
Alexander v. Louisiana, 405 U.S. 625 (1972).	8,9
Willie Bailey, et al. v. Roy L. Vining, et al., decided August 17, 1978, Civil Action No. 76-199-MAC.	4
Barrow v. State, 239 Ga. 162(1) (1977).	7
Cobb v. State, 218 Ga. 10 (1962).	6
Dennis v. Hopper, 548 F.2d 589 (5th Cir. 1977).	7
Evans v. Maggio, 557 F.2d 430 (5th Cir. 1977).	6
Francis v. Henderson, 425 U.S. 536 (1976).	passim
Goodwin v. Hopper, 243 Ga. 10 (1979).	5,8
Heard v. State, 210 Ga. 523 (1954).	6
Simmons v. State, 226 Ga. 110 (1970).	6,7
Tennon v. Ricketts, 574 F.2d 1243 (5th Cir. 1978). . . .	6
Williams v. State, 210 Ga. 665 (1954) remanded, 349 U.S. 375 (1955) reaffirmed, 211 Ga. 763 (1955) cert. denied, 350 U.S. 950 (1956).	7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5942

TONY B. AMADEO,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Whether "lack of knowledge" is an insufficient showing of "cause" under Francis v. Henderson, 425 U.S. 536 (1976) to exempt the Petitioner from the Georgia procedural rule requiring a timely challenge to the array of the grand and petit juries.

PART ONE

STATEMENT OF THE CASE

Petitioner, Tony B. Amadeo, was convicted in the Superior Court of Putnam County, Georgia of the offense of murder and of criminal attempt to commit theft. Petitioner received the death penalty on the charge of murder and received a ten year sentence on the charge of criminal attempt to commit theft. A motion for new trial was filed on Petitioner's behalf on December 21, 1977, but was overruled by the Superior Court of Putnam County on September 18, 1978.

Petitioner filed a notice of appeal on October 17, 1978 to the Supreme Court of Georgia. The Supreme Court of Georgia affirmed the Petitioner's convictions and sentences in Amadeo v. State, 243 Ga. 627 (1979). Following the submission of briefs on his direct appeal, Petitioner obtained new counsel, who raised new issues for the consideration of the Supreme Court of Georgia. A motion for rehearing was filed on behalf of the Petitioner, raising these new issues and these issues were considered, but rejected, by the Supreme Court of Georgia in its opinion denying the Petitioner's motion for rehearing on May 29, 1979.

A petition for a writ of certiorari was docketed in this Court on August 27, 1979. The petition was denied on November 26, 1979. A petition for rehearing was denied on January 21, 1980. In his previous petition for certiorari, Petitioner raised the issue now presently before this Court in his second petition for a writ of certiorari.

Following the denial of his petition for a writ of certiorari, Petitioner filed a petition for a writ of habeas corpus in the Superior Court of Putnam County, Georgia. Petitioner raised the issue now before this Court, as well as one additional issue. The Superior Court of Putnam County, Georgia denied relief based on Petitioner's allegations in its order of February 29, 1980. The Superior Court of Putnam County noted the previous decision of the Supreme Court of Georgia deciding the jury issue and declined to consider it further.

Petitioner then filed an application for a certificate of probable cause to appeal to the Supreme Court of Georgia. This application was denied on September 10, 1980, with a motion for rehearing being denied on September 24, 1980. It is from this denial of the application for a certificate of probable cause that the Petitioner now seeks review.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

PETITIONER'S ALLEGATION OF "LACK OF KNOWLEDGE" DOES NOT EXEMPT HIM FROM THE GEORGIA PROCEDURAL RULE REQUIRING A TIMELY CHALLENGE TO THE ARRAY OF THE GRAND AND PETIT JURIES AND THE GEORGIA SUPREME COURT PROPERLY DETERMINED THAT PETITIONER'S JURY CHALLENGES WERE UNTIMELY.

Petitioner asserted as his Fourth Enumeration of Error to the Supreme Court of Georgia in his direct appeal and to the Superior Court of Putnam County, Georgia in his state habeas corpus petition, that the jury box, as it existed in Putnam County, Georgia at the time of the Petitioner's trial, was unconstitutionally composed. In his appeal to the Supreme Court of Georgia, as well as in his present petition for certiorari, Petitioner alleges that it has been shown that the jury box in Putnam County, Georgia is unconstitutionally composed based on the decision of the United States District Court for the Middle District of Georgia, Macon Division in Willie Bailey, et al. v. Roy L. Vining, et al., decided August 17, 1978, Civil Action No. 76-199-MAC.[1/] In that case, the United States District Court

---

[1/] As previously noted, this issue was also raised in Petitioner's prior petition for a writ of certiorari, No. 79-5255.

for the Middle District of Georgia found that the jury box that then existed in Putnam County was unconstitutionally composed and could not be further utilized. (A copy of the order of the court and a portion of the evidentiary hearing in this District Court are attached as Appendix "B" and "C" to the Petitioner's petition for a writ of certiorari).

However, even when faced with the decision of the United States District Court for the Middle District of Georgia, finding that the jury box in Putnam County was unconstitutionally composed, the Supreme Court of Georgia determined that Petitioner's challenge to the jury composition "comes too late." The state habeas corpus court noted the Supreme Court of Georgia decision and declined to consider the issue further.

In reaching its decision that Petitioner's jury composition claims should be barred on direct appeal due to their untimeliness, the Georgia Supreme Court cited various Georgia cases including, Goodwin v. Hopper, 243 Ga. 193 (1979), for the proposition that challenges to jury composition are waived, unless they are challenged prior to indictment. In Goodwin v. Hopper, supra, the Supreme Court of Georgia held that the failure to challenge the arrays of the grand and traverse juries, alone, was not a ground for ineffective assistance of counsel or "cause" within the meaning of Ga. Code Ann. § 50-127(1). The Georgia Supreme Court in Goodwin v. Hopper, supra, cited the decision of the United States Supreme Court in Francis v. Henderson, 425 U.S. 536 (1976). Similarly, the failure of the Petitioner's trial counsel to challenge the arrays of the grand and traverse jury is not either a ground of ineffective assistance of counsel or "cause" under Francis v. Henderson, supra.

Petitioner now argues in this Court that there was no waiver of his right to challenge the composition of the grand and petit juries because he had "no opportunity to discover purposeful discrimination." The general rule of Georgia procedure, as noted above, has long required a defendant to make a jury challenge at, or before, the time the jury is "put upon him." E.g., Ga. Code Ann. § 59-803; Cobb v. State, 218 Ga. 10, 21-22 (1962); Williams v. State, 210 Ga. 665, 667 (1954), remanded, 349 U.S. 375 (1955), reaffirmed, 211 Ga. 763, 88 (1955), cert. denied, 350 U.S. 950 (1956); and Heard v. State, 210 Ga. 523 (1954). However, Georgia procedure, as well as federal procedure, recognizes a "cause" exception to this timeliness requirement. See Simmons v. State, 226 Ga. 110 (1970).

The controlling case under federal law concerning whether failure to comply with procedural requirements for jury challenges acts as a waiver of a defendant's right to make such challenges, is Francis v. Henderson, 425 U.S. 536, 542 (1976). In Francis v. Henderson, supra, it was held that a federal habeas corpus petitioner must establish "not only a showing of 'cause' for the defendant's failure to challenge the composition of the grand jury before trial, but also a showing of "actual prejudice," in order to raise jury composition issues without complying with the timeliness requirements of state law.

Recent decisions of the Court of Appeals for the Fifth Circuit have emphasized that in order to raise the issue of the composition of grand and petit juries in a federal habeas corpus proceeding a petitioner who has failed to comply with the state's procedural requirements for jury challenges, must establish both cause and actual prejudice. See Tennon v. Ricketts, 574 F.2d 1243, 1245 (5th Cir. 1978); Evans v. Maggio, 557 F.2d 430, 434 (5th Cir. 1977);

Dennis v. Hopper, 548 F.2d 589, 590-591 (5th Cir. 1977); Wright v. Wainwright, 537 F.2d 224, 226 (5th Cir. 1976). Therefore, it is submitted that under Francis v. Henderson, supra, and under Georgia procedure as set forth in such cases as Simmons v. State, 226 Ga. 110 (1970), the Petitioner must show both "cause" and "prejudice" in order to exempt himself from the Georgia timeliness rule concerning jury challenges. Again, Petitioner's allegation is that he did not waive his right to object to the jury composition of the grand and petit jury in Putnam County, because he had no opportunity to discover purposeful discrimination.

The Petitioner cited the case of Barrow v. State, 239 Ga. 162(1) (1977) in support of his position to the Georgia Supreme Court and now cites it to this Court. However, the Supreme Court of Georgia properly found that Barrow v. State, supra, was distinguishable from the instant case. Petitioner now seeks to cite Barrow v. State, supra, for the proposition that failure to timely raise a challenge to the arrays of the grand and petit jury, may not be deemed a waiver under special circumstances. In distinguishing Barrow v. State, supra, from the instant case, the Supreme Court of Georgia found that the special circumstances occurring in Barrow, were not present in the instant case.

The Supreme Court of Georgia in its decision in Petitioner's case on direct appeal, noted a major distinguishing factor between Barrow v. State, supra, and the Petitioner's case. This factor was that Barrow's conviction and sentence had been set aside on appeal, and at the time of Barrow's new trial, he filed and pursued timely challenges to the arrays and when they were denied, brought his case back to the court by means of an interlocutory appeal, prior to trial and conviction. The Georgia

Supreme Court held that Petitioner's case was one of many cases in which a defendant takes his chances by not challenging the arrays of the grand and traverse juries and then attempts to challenge the arrays after conviction. The Georgia Supreme Court specifically held that this trial tactic was precluded by both Georgia case law in such cases as Goodwin v. Hopper, 243 Ga. 193 (1979) and by federal case law, Francis v. Henderson, 425 U.S. 536 (1976). The Georgia Supreme Court's decision finding that no special circumstances existed in the Petitioner's case to allow him to be exempted from the waiver rule regarding jury challenges, was correct and in accord with both state and federal law.

Petitioner first alleges that he should not be foreclosed from making his jury challenge by the waiver principle, because although the jury list was non-representative, the percentages on that list would not be sufficient to make out a prima facie case of jury discrimination, solely on percentages. Petitioner argues that the disparity on the basis of percentage was in the area of fourteen percent and since this would not make out a prima facie case of discrimination on the basis of race, his counsel was correct in declining to make a jury challenge at the time of trial. It should be noted that this Court in Alexander v. Louisiana, 405 U.S. 625, 630 (1972), stated in relation to racial discrimination in jury composition:

> "This Court has never announced a mathematical standard for the demonstration of 'systematic exclusion of blacks' but has, rather, emphasized that a factual inquiry is necessary in each case that takes into account all possible explanatory factors."

Therefore, the mere fact that a certain percentage of blacks were included on the jury lists, would not mean that a challenge to the jury composition was unnecessary, nor that any such challenge might not have been successful, as there are no set percentages for showing a prima facie case of discrimination. Instead, an attorney must, under Alexander v. Louisiana, supra, take into account all possible explanatory factors.

Secondly, Petitioner alleges that no matter how effective his attorneys were, they could not have known of this defect in the jury selection process until it was discovered in the federal proceeding. Petitioner alleges that there was "no means to discover" this defect and that it would have been impossible to discover it prior to trial. However, as this defect was subsequently uncovered in the federal proceeding, it is difficult to make a finding that it was undiscoverable, even if it was not a matter of public record.

Petitioner argues that placing the burden on his attorney to discover this discriminatory factor in a hearing, would lead to the conclusion that all attorneys would have to bring jury challenges in each case. This conclusion is unwarranted. All that is required is that the attorney consider all possible factors in determining whether or not to make a challenge. The mere fact that making the type of challenge required in this case might have been a lengthy and extensive process, does not prevent the failure to make this challenge from waiving the Petitioner's right to challenge the jury composition at a later date.

Petitioner argues that if defense attorneys and defendants are deemed to have waived such "hidden issues" by the failure to timely raise such issues, there is an increased burden on the administration of justice. Not requiring defense attorneys and defendants to fully investigate possible bases for making jury challenges, but rather allowing them to sit back and wait to see if any such defects surface, would also increase the burden on the administration of justice, by allowing such issues to be raised after trial or in a collateral attack, even if they were not raised at the original trial. This would also allow the use of the trial tactic condemned by the Supreme Court of Georgia in its decision in Petitioner's direct appeal, by means of which defense attorneys take their chances with unchallenged grand and traverse juries and then attempt to challenge the arrays of these juries after conviction.

Petitioner's final argument is that the fact that this case involved the imposition of the death penalty, sets it apart from other cases in which it is determined that a waiver of the right to make a challenge to the grand and petit juries, has been made. Respondent asserts that the fact that this is a death penalty case, does not dispense with the "cause" and prejudice requirement of Francis v. Henderson, 425 U.S. 536 (1976). The standard of waiver should be and is, the same for all cases in which the issue arises.

It need not be decided whether in this particular case there was intentional discrimination in the composition of the grand and petit juries involved in the Petitioner's case, as Petitioner under the cause and prejudice standard of Francis v. Henderson, supra, has not shown any special circumstances which

would prevent his failure to challenge the composition of these juries from being held to be a waiver of his right to make such challenges. The Supreme Court of Georgia properly dealt with this issue on Petitioner's direct appeal and declined to reconsider it by denying Petitioner's application for a certificate of probable cause to appeal from the denial of state habeas corpus relief.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that this petition for a writ of certiorari be denied.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant Attorney General

JOHN C. WALDEN
Senior Assistant Attorney General

SUSAN V. BOLEYN
Assistant Attorney General

JOSEPH H. BRILEY
District Attorney

Please serve:

SUSAN V. BOLEYN
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3397

RECEIVED
DEC 23 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT FOR THE UNITED STATES

TONY B. AMADEO, :

Petitioner :

V. : CASE NUMBER 80-5942

EUGENE RUSSEAU, SHERIFF, :

Respondent :

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

The Petitioner, TONY B. AMADEO, who is now confined to the Putnam County Jail in Eatonton, Georgia, and who is under a sentence of death, asks leave to file the attached Petition for Writ of Certiorari to the United States Supreme Court without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 53.

The Petitioner's Affidavit in support of this motion is attached hereto.

GARLAND, NUCKOLLS & CATTS, P.C.

By: /s/ Edward T. M. Garland
EDWARD T. M. GARLAND

1012 Candler Building
Atlanta, Georgia 30303
(404) 577-2225

/s/ William M. Warner
WILLIAM M. WARNER

1010 Angelo Court
Atlanta, Georgia 30319
(404) 261-5519

ATTORNEYS FOR PETITIONER

RECEIVED
DEC 23 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

FOR THE UNITED STATES

TONY B. AMADEO, :

Petitioner :

V. : CASE NUMBER _____

:

Respondent :

PAUPER'S AFFIDAVIT

TONY B. AMADEO, Petitioner, being duly sworn, deposes and says:

(1) I am a citizen of the United States and the Petitioner in the above-entitled action.

(2) I desire to prosecute a review of the judgment entered by the Supreme Court of the State of Georgia on September 10, 1980, and affirmed on rehearing on September 24, 1980, pursuant to 28 U.S.C. §1257(3), but because of my poverty, I am unable to pay the costs of such a review.

(3) I believe I am entitled to the redress I seek by such a review, and that such a review presents substantial issues of deprivation of rights secured by the Constitution of the United States.

The nature of the question to be presented upon such a review is as follows:

WHETHER THE ENTIRE JURY LIST INVOLVED IN PETITIONER'S INDICTMENT AND TRIAL, BOTH GRAND AND PETIT, WAS UNCONSTITUTIONALLY COMPOSED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

I contend that the Supreme Court of Georgia erred in upholding my conviction and sentence.

WHEREFORE, Affiant prays that he may have leave to proceed in this Court on Petition for Writ of Certiorari in forma pauperis.

Tony B. Amadeo
TONY B. AMADEO

Sworn to and subscribed
before me this 19th day
of December, 1980.

Wm M. Warner
Notary Public

Notary Public, Georgia State at Large
My Commission Expires [illegible] 1982